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August 20, 1997

F. Andrew Turley, Esq.
Supervisory Attorney
Central Enforcement Docket
Federal Election Commission
Washington, DC 20463

Re: MUR 4643

Dear Mr. Turley:

I am responding to your letter of June 11, 1997 with regard to MUR 4643. I served as Treasurer of the Serna election campaign.

In his complaint, Mr. Dendahl focuses on what is known as "soft money." People and organizations have the right to expend their own resources to get out a political message. If such persons or organizations wish to make direct contributions to a given candidate's campaign for federal office, either in cash or in kind, then certain well-known restrictions apply. Mr. Dendahl blends the two concepts together. With this false groundwork laid, he then contends that the "Democratic Party of New Mexico funneled over \$250,000.00 in 'soft money' into the special federal election".

2 U.S.C.A. § 441(b) is designed to restrict express advocacy. Issue advocacy is not restricted, nor can it be from the constitutional standpoint. Faucher v. Federal Election Commission, 928 F.2d 468 (1st Cir. 1991), cert. denied, 112 S. Ct. 79. As we understand it, this means that the Democratic Party of New Mexico (or the Republican Party of New Mexico) is free to spend money and energy urging people to vote, making it easier to vote, educating the public about its view of the issues, etc. The Democratic Party is lawfully entitled to do the things Mr. Dendahl complains of, such as purchasing absentee ballot applications, conducting telephone polls, mailing out issue-oriented materials, etc.

The framers of the constitution did what they could to assure a healthy environment for political parties. They hardly would have expected a political party to cloister itself during an election campaign. To suggest that this is what a political party should do if the only election on the horizon is a specially-scheduled federal election is ridiculous. Although I have not bothered to look, I presume Mr. Dendahl's records would show that the Republican Party of New Mexico conducted polls, incurred telephone and mailing expenses and generally attempted to get out the vote in connection with this same election.

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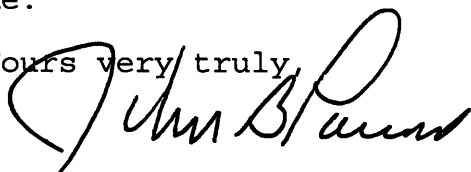
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The complaining party does not explain how he feels the Serna campaign violated the relevant federal law. Presumably, Mr. Dendahl fancies some sort of conspiracy between the campaign and the party in the establishment of the "funnel" of which he speaks. It would be disingenuous to suggest that the campaign was unaware of the traditional political activities of the Democratic Party during an election. Everyone in the state knew that the party was doing what it could to persuade voters to vote Democratic. We have looked into the caselaw to see if any federal court has ever held that such activities are a violation of the law in conjunction with a special election. We find none. In Stern v. FEC, 921 F.2d 296 (D.C. Cir. 1990), the plaintiff contended that his employer's PAC's financial support of unopposed candidates served no political purpose and was therefore unlawful. The court held that "nothing in the Act suggests that the legitimacy of campaign contributions varies with the closeness of the race" and pointed out that "FEC regulations specifically contemplate contributions to unopposed candidates." 921 F.2d at 298. The context in which Stern made his complaint was different than ours, but the court's point is applicable here. Nothing in the statutes suggests that Congress intended to muzzle political parties during special elections. Even if it did, the effect would be an unconstitutional burdening of political speech. FEC v. Massachusetts Citizens for Life, Inc., 479 U.S. 238 (1986).

We believe that the Dendahl complaint was filed for political, not regulatory, purposes. We ask that it be summarily dismissed.

If you have any questions or if you would like any information from the Serna campaign, please do not hesitate to be in touch with me.

Yours very truly,



JOHN B. POUND

JBP/kb

cc: Mr. Eric Serna